Crothall Hospital Services, Inc. *and* James E. Mock, Petitioner and District 1199C, affiliated with National Union of Hospital and Health Care Employees, Division of RWDSU/AFL-CIO. Case 4-RC-1059

27 June 1984

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 7 July 1982[1] the Petitioner filed a petition under Section 9(c) of the National Labor Relations Act. On 5 August following an investigation, the Regional Director for Region 4 administratively dismissed the petition, concluding that it was barred by a memorandum of agreement, which the Employer and District 1199C had executed 29 June. The Regional Director found that the memorandum of agreement contained terms and conditions of employment sufficient to constitute a bar, because it incorporated by reference the terms of the parties' collective-bargaining agreement which expired 30 June, set forth the duration of a new contract, and contained modifications of the language and changes in the economic terms of the previous contract. In addition, he specifically found that the memorandum of agreement had all of the requisite signatures affixed to it; that the failure of the National Union of Hospital and Health Care Employees (the National Union) with which District 1199C is affiliated to sign the agreement was inconsequential, because District 1199C, not the National Union, is the employees' certified bargaining representative; and that ratification of the memorandum of agreement by unit employees was unnecessary for contract-bar purposes, because neither the agreement itself, nor the terms it incorporated, expressly required it. Thereafter, the Employer filed with the Board a request for review of the Regional Director's administrative dismissal of the petition. The Employer contended, inter alia, that the absence of the National Union representative's signature on the memorandum of agreement rendered the agreement inoperative as a bar.[2]

On 2 November the Board issued its "Ruling on Administrative Action," in which it concluded that reinstatement of the petition and a hearing on the issues raised by the Employer's request for review were warranted. Accordingly, the petition was reinstated and the case was remanded to the Regional Director for appropriate action.

On 19 January 1983 a hearing was held before Hearing Officer Barbara J. Fick. Following the close of the hearing and pursuant to Section 102.67 of the Board's Rules and Regulations, the Regional Director transferred this proceeding to the Board for decision. Thereafter, the Employer and District 1199C filed briefs with the Board.

The Board has reviewed the hearing officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

On the entire record in this proceeding, the Board finds

1. The parties stipulated, and we find, that the Employer is a Delaware corporation with its principal office located in Newark, Delaware, and that it provides contract management environmental services. The parties further stipulated that, during the year preceding the hearing, the Employer's gross revenue exceeded $500,000, and that the Employer performed services valued in excess of $50,000 for customers located outside the State of Delaware. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. District 1199C and the National Union of Hospital and Health Care Employees, Division of RWDSU/AFL-CIO, with which District 1199C is affiliated, are labor organizations within the meaning of the Act. District 1199C claims to represent certain employees of the Employer. The Petitioner, an employee of the Employer, asserts that District 1199C, which had been previously certified by the Board and recognized by the Employer as the bargaining representative of the employees involved herein, is no longer such representative as defined in Section 9(a) of the Act.

3. We find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

In March 1980 the Board certified District 1199C, affiliated with National Union of Hospital and Health Care Employees, Division of RWDSU/AFL-CIO, as the exclusive bargaining representative of the Employer's housekeeping employees employed at Haverford State Hospital in Haverford, Pennsylvania. Thereafter, the Employer and District 1199C negotiated their first collective-

[1] All dates are in 1982, unless otherwise indicated.

[2] The Employer also disputed the Regional Director's finding that the memorandum of agreement contained terms and conditions of employment sufficient to act as a bar. It contended as well that, contrary to Board law, ratification, under the circumstances of this case, should be required before the contract can constitute a bar, even though there was no such requirement expressly stated in either the collective-bargaining agreement or the memorandum of agreement. As we find merit in the Respondent's principal contention, for the reasons stated herein, there is no need to address these additional issues.

bargaining agreement, effective 15 May 1980 through 30 June 1982. The title page of this agreement states that it is "by and between NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, DIVISION OF RWDSU/-AFL-CIO, AND ITS AFFILIATE DISTRICT 1199C and CROTHALL HOSPITAL SERVICES, INC." Similarly, the preamble identifies the parties to the agreement in the following manner:

> THIS AGREEMENT made and entered into this 15th day of May, 1980, by and between CROTHALL HOSPITAL SERVICES, INC. (hereinafter called the "Employer") and the NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, A DIVISION OF RWDSU, AFL-CIO, AND ITS AFFILIATE DISTRICT 1199C (hereinafter called the "Union"), acting herein on behalf of the Employees of the said Employer, as hereinafter defined, now employed and hereinafter to be employed and collectively designated as the "Employees."

In the recognition clause and throughout the agreement, District 1199C, the certified bargaining agent, and its parent organization, the National Union, are referred to jointly as the "Union."

Copies of the 1980–1982 agreement were signed by representatives of the Employer, District 1199C, and the National Union. Barbara Pearlstein and Edward Shaeffer negotiated the agreement for District 1199C but, as neither of them was a union officer at the time, they did not have the authority to sign the contract on the Union's behalf. Thus, they initialed the agreement "For District 1199C" underneath the signature lines provided for District 1199C and the National Union. Subsequently, Henry Nicholas, who was both president of District 1199C and a National Union officer, executed a second copy of the agreement on behalf of District 1199C. Copies of the contract then were forwarded to the National Union's offices in New York for execution by that organization. Robert Muhlenkaup, a National Union officer, signed them.[3]

Prior to the expiration of the 1980–1982 agreement, the Employer and District 1199C commenced negotiations on a new contract. Several bargaining sessions were held and, 29 June, they signed a cryptic, two-page memorandum of agreement. It provided for a contract of 2 years' duration, set forth certain wage rates, as well as the rate of the Employer's benefit fund contributions, and incorporated, with various modifications, the terms of the collective-bargaining agreement set to expire the following day. It is evident from the face of the agreement that it was intended to be read in conjunction with the 1980–1982 agreement.[4]

District 1199C had given Patricia DiDomenico, an organizer, responsibility for negotiating the 1982 contract. She and Michael Nocho, a representative from the bargaining unit, signed the memorandum of agreement for District 1199C.[5] On 29 June, on the conclusion of negotiations, DiDomenico informed the Employer's representatives that the contract needed to be ratified before it would become effective. The following day, the members of the bargaining unit voted not to ratify the contract.

The testimony concerning the events subsequent to the ratification vote of 30 June and up to and including a second vote conducted on the morning of 1 July is contradictory. There is disputed testimony, for example, that at least some of the employees were misled into believing that the purpose of the second vote was to determine only whether or not the employees would support a strike. In any event, it is plain that DiDomenico interpreted the vote as one in favor of ratification and against a strike, and that she so informed the Employer.

The Petitioner filed the decertification petition in this case 7 July. On that date, the only signatures on the memorandum of agreement were those of DiDomenico, Nocho, and the Employer's representatives. The National Union did not execute the memorandum of agreement, or any other agreement incorporating its terms, before the petition was filed. In August, when District 1199C presented the Employer with a draft contract, it refused to sign.

The Employer contends that the memorandum of agreement was signed by only two of the three named parties to the agreement, and that the absence of the third signature, that of the National Union, rendered it incapable of barring the instant

[3] The National Union's constitution provides that:
All collective-bargaining contracts, extensions or renewals thereof entered into by the Districts or their subdivisions, to be valid, must be signed by the President of the National Union or his/her designee and shall be and remain the property of the National Union and the District.

[4] The body of the document is as follows:Agreed between Crothall American at Haverford State Hospital and 1199C the following:
1) Contract 7/1/82 with expiration 7/30/84.
2) delete last sentence page 14 of present contract.
3) add 1 personal day to present holiday schedule.
4) add Sec. 2, such employees become members of the union no later than 30th day of employment.
5) delete Sec. 1, 2, 3, and 7 Art. VIII of present contract.
6) accept new language presented for funds—Benefit Fund at 11.5% effective 7/1/82.
7) Wages— *7/1/82* *7/1/83*
4.15 *starting rate* *4.20*
4.65 *after 60 days top rate* 4.85

[5] There is no contention that these signatures were insufficient to bind District 1199C, pending ratification of the contract.

petition. District 1199C asserts that, because the National Union plays no role whatsoever in any of its contract negotiations, the failure of that organization to sign the memorandum of agreement had no impact on either the validity of the agreement or its ability to act as a bar. According to District 1199C, it forwarded the initial 1980–1982 collective-bargaining agreement to the National Union for signature only because it was a formality required by the National Union's constitution.

In *Appalachian Shale Products*,[6] the Board, as part of a thorough reexamination of its contract-bar rules, addressed the issue of "adequacy of contract." The Board noted that it was a well-established principle that "contracts not signed before the filing of a petition cannot serve as a bar."[7] It observed, however, that, despite the simplicity of the rule, a problem in application had developed, noting that an exception had been created where parties had considered an agreement properly concluded and had put important provisions into effect, but had failed to sign it prior to the filing of a petition. As the Board considered its signature requirement to be relatively simple, and also believed that such exceptions had rendered "unduly complex a field that should not have become so involved,"[8] the Board found that its policy in this area warranted reconsideration. Therefore, consistent with its stated intention of "simplifying and clarifying . . . application [of contract-bar rules] wherever feasible in the interest of more expeditious disposition of representation cases,"[9] the Board adopted the following rule:[10]

> [A] contract to constitute a bar must be signed by all the parties before a petition is filed and that unless a contract signed by all the parties precedes a petition, it will not bar a petition even though the parties consider it properly concluded and put into effect some or all of its provisions.

In the rule set forth above, the Board did not state that a contract, to be a bar, need be signed only by the Employer and the employees' certified bargaining agent. Rather, the Board makes it quite clear that, before an agreement can operate to bar a petition, all the parties must have signed it. Thus, if there are named parties to a collective-bargaining agreement aside from the employer and the certified bargaining agent, they too must sign the contract before it may act as a bar.[11]

Furthermore, we cannot conclude that the Board failed to consider the issue of additional parties when it reformulated its signature rule, since contract-bar cases involving the voluntary addition of parties to collective-bargaining agreements predated *Appalachian Shale*. In *Filtration Engineers, Inc.*,[12] the collective-bargaining agreement urged as a bar stated that it was "between the Filtration Engineers Incorporated, and the United Steel Workers of America and its Local #2816."[13] Up until a few years earlier, the International union had executed agreements "on behalf" of the local. The Board, noting that it was concerned only with the express terms of the agreement, and not with the relationship between the International and its local as defined by the former's constitution, found that the local was one of the named parties to the contract and, as the local had never signed the contract, it could not, therefore, constitute a bar.

In *H. W. Rickel & Co.*,[14] the Board faced a similar set of circumstances. In that case, however, it was the signature of the International union, not the local union, which was missing at the time the petition was filed. The recognition clause of the contract in question named the local union as the employees' exclusive bargaining agent. The preamble, on the other hand, provided that the contract was entered into between the employer, the local union, and the International union. The International union had played no role whatsoever in the contract negotiations. On reaching an agreement, the employer and the local union signed the contract, and, then, the local union forwarded it to the International union for that organization's endorsement. The International union however withheld its endorsement and instructed the local union to secure certain changes. The local union ignored the parent body's instructions and, along with the employer, treated the contract as if it were in full force and effect. Ultimately, the International union signed the contract, but not before a petition was filed. Consistent with *Filtration Engineers*, the Board held that, because the International union, a named party to the contract, failed to sign the contract prior to the filing of the petition, the contract was ineffective as a bar.

[6] 121 NLRB 1160 (1958).
[7] Id. at 1161.
[8] Id. at 1162.
[9] Id. at 1161.
[10] Id. at 1162.
[11] The Supreme Court, in *NLRB v. Wooster Division*, 356 U.S. 342, 350 (1958), stated that the Act does not prohibit an employer and a union, if willing, from adding another organization as a coparty to their collective-bargaining agreement.
[12] 98 NLRB 1210 (1952).
[13] Id. at 1211.
[14] 105 NLRB 679 (1953).

In *Standard Oil Co.*,[15] the Board again had occasion to consider the relationship between a local union and its parent organization in a contract-bar context. In that case, the local union was the certified bargaining agent. Although the International union was not a coparty to the contract, the contract nevertheless provided that the local union would submit the contract to the International union for its certification. The contract further provided that the agreement would be null and void if the local union failed to notify the employer by a specified date that the contract had been certified. At the time the petition was filed, the International union had not yet certified the contract. The Board found that *Rickel* was not controlling in this instance. "[A] requirement for certification by an organization *which is not a named party to the contract* [emphasis added]," the Board concluded, "is not a substantial requirement necessary to achieve stability in the bargaining relationship of the named parties."[16]

Here, the Employer and District 1199C added the parent labor organization as a named party to their contract. Therefore, the instant case is governed by *Filtration Engineers* and *H. W. Rickel*, rather than by *Standard Oil*. District 1199C was certified as the exclusive bargaining representative of the unit employees following a Board-conducted election. The National Union was not certified along with District 1199C as the employees' joint bargaining agent.[17] Thus, the concomitant statutory obligation of the Employer to bargain with the certified union ran only to District 1199C, and not to the National Union.[18] However, the collective-bargaining history between the Employer and District 1199C reveals that they nevertheless agreed to include the National Union as a coparty to both their 1980–1982 and 1982 agreements. The express language of the 1980–1982 collective-bargaining agreement, which was incorporated by reference into the 29 June memorandum of agreement, plainly identifies the National Union as a party to the contract. On the title page and in the preamble of the agreement, the contracting parties are identified as the Employer, the National Union, and District 1199C. Unlike the designation which appears in the Board certification, in which the name of the National Union appears only for the limited purpose of identifying the parent organization with which the certified union, District 1199C, is affiliated, both labor organizations are referred to in the contract conjunctively as contracting parties.[19]

Significantly, the change in designations from that in the certification, "District 1199C, affiliated with National Union of Hospital and Health Care Employees, Division of RWDSU/AFL-CIO," to that in the contract, "NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, DIVISION OF RWDSU/AFL-CIO, AND ITS AFFILIATE DISTRICT 1199C," was entirely consistent with the National Union's constitution, which provides, in pertinent part, that a collective-bargaining agreement entered into by a District cannot be valid unless it is signed by the National Union.[20] By this action, District 1199C and the Employer expressly added the National Union as a named party to their collective-bargaining agreement and, as a consequence, made it necessary for the National Union to sign the contract *in* that capacity before it could become a bar. It is undisputed that the contract urged as a bar did not contain the signature of the National Union at the time the petition was filed. The contract does not, therefore, constitute a bar to the petition.

4. The parties agreed, and we find, that the following unit is appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

[15] 119 NLRB 598 (1957).

[16] Id. at 600.

[17] In administratively dismissing the petition in the instant case, the Regional Director found that the signature of the National Union on the memorandum of agreement (which incorporated by reference the 1980–1982 agreement) was unnecessary for contract-bar purposes, citing *Pharmaseal Laboratories*, 199 NLRB 324 (1972). That case, however, is inapposite. In *Pharmaseal*, two local unions were jointly certified to represent the employees in a single bargaining unit. The failure of one of the two locals to sign the contract, the Board held, did not prevent the contract from barring the petition because, in cases of joint certification, the joint representative constitutes a single party. Therefore, the signature of one of the two locals acting on behalf of the joint representative was all that was required to bind the two locals to the contract. Here, as in *Filtration Engineers* and *H. W. Rickel*, the Unions involved were not jointly certified. The missing signatures in those two cases, like the absent signature in this case, were those of third-party unions, voluntarily added by the employers and the certified unions as coparties to their respective contracts.

[18] *Standard Oil Co.*, 92 NLRB 227, 236 (1950).

In Member Hunter's view, *Standard Oil Co.*, supra, 119 NLRB 598, and *Pharmaseal Laboratories*, supra, are fundamentally inconsistent with the instant decision's strict application of the requirements of *Appalachian Shale*, supra, with which Member Hunter agrees. In order to clarify the case law in this regard, Member Hunter would overrule these decisions.

[19] Cf. *Kit Mfg. Co.*, 150 NLRB 662, 672 (1964) (International union was not a party to a contract between an employer and a certified local union, where the preamble of the contract did not refer to the International and its local conjunctively, but, rather, utilized the same designation which appeared in the Board certification, one which included the name of the International union only to identify the local union's parent organization).

[20] See fn. 3, supra.

All housekeeping employees employed by the Employer at Haverford State Hospital, excluding office and clerical employees, temporary employees, professional employees, technical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

[Direction of Second Election omitted from publication.]